

order to the agency and to all interested parties who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the judge will:

(1) Conduct a hearing, if necessary, and issue a decision; and

(2) File a record of the proceeding with the designated LTRO.

(c) The judge's modification order or decision will become final at the end of the 30 days after the date on which it was mailed, unless a timely notice of appeal is filed with the Board within that period.

(d) Any interested party who is adversely affected by the judge's modification order or decision may appeal it to the Board within 30 days after the date on which it was mailed.

(e) The judge's modification order or decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the decision is mailed, and giving the Board's address. The judge's modification order or decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

**§ 30.127 What happens if property was improperly included in the inventory?**

(a) When, after a decision and order in a formal probate proceeding, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate this property. A petition for modification may be filed by the superintendent of the agency where the property is located, or by any interested party. The petitioner must serve the petition on all parties whose interests may be affected by the requested modification.

(b) A judge will review the merits of the petition and the record of the title from the LTRO on which the modification is to be based, enter an appropriate decision, and give notice of the decision as follows:

(1) If the decision is entered without a formal hearing, the judge must give notice of the decision to all interested parties whose rights are affected.

(2) If a formal hearing is held, the judge must:

(i) Enter a final decision based on his or her findings, modifying or refusing to modify the property inventory; and

(ii) Give notice of the decision to all interested parties whose rights are affected.

(c) Where appropriate, the judge may conduct a formal hearing at any stage of the modification proceeding. The hearing must be scheduled and conducted under this part.

(d) The judge's decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed, and giving the Board's address. The judge's decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

(e) The judge must forward the record of all proceedings under this section to the designated LTRO.

**§ 30.128 What happens if an error in BIA's estate inventory is alleged?**

This section applies when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected.

(a) Alleged inaccuracies may include, but are not limited to, the following:

(1) Trust property should be removed from the inventory because the decedent executed a gift deed or gift deed application during the decedent's lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed or gift deed application;

(2) Trust property should be removed from the inventory because a deed through which the decedent acquired the property is invalid;

(3) Trust property should be added to the inventory; and

(4) Trust property included in the inventory is described improperly, although an erroneous recitation of acreage alone is not considered an improper description.

(b) When an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution under 25 CFR parts 150, 151,

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or 152 and the appeal procedures at 25 CFR part 2.

(1) If BIA makes a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the probate decision will reflect the inventory determination.

(2) If BIA does not make a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the final probate decision will:

- (i) Include a reference to the pending inventory challenge; and
- (ii) Note that the probate decision is subject to administrative modification once the inventory dispute has been resolved.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7506, Feb. 10, 2011]

### **Subpart D—Recusal of a Judge or ADM**

#### **§ 30.130 How does a judge or ADM recuse himself or herself from a probate case?**

If a judge or ADM must recuse himself or herself from a probate case under § 4.27(c) of this title, the judge or ADM must immediately file a certificate of recusal in the file of the case and notify the Chief ALJ, all interested parties, any counsel in the case, and the affected BIA agencies. The judge or ADM is not required to state the reason for recusal.

#### **§ 30.131 How will the case proceed after the judge's or ADM's recusal?**

Within 30 days of the filing of the certificate of recusal, the Chief ALJ will appoint another judge or ADM to hear the case, and will notify the parties identified in § 30.130 of the appointment.

#### **§ 30.132 May I appeal the judge's or ADM's recusal decision?**

(a) If you have filed a motion seeking disqualification of a judge or ADM under § 4.27(c)(2) of this title and the judge or ADM denies the motion, you may seek immediate review of the denial by filing a request with the Chief ALJ under § 4.27(c)(3) of this title.

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(b) If a judge or ADM recuses himself from a probate case, you may not seek review of the recusal.

### **Subpart E—Claims**

#### **§ 30.140 Where and when may I file a claim against the probate estate?**

You may file a claim against the estate of an Indian with BIA or, after the agency transfers the probate file to OHA, with OHA.

(a) In a formal probate proceeding, you must file your claim before the conclusion of the first hearing. Claims that are not filed by the conclusion of the first hearing are barred.

(b) In a summary probate proceeding, if you are a devisee or eligible heir, you must file your claim with OHA within 30 days after the mailing of the notice of summary probate proceeding. Claims of creditors who are not devisees or eligible heirs will not be considered in a summary probate proceeding unless they were filed with the agency before it transferred the probate file to OHA.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7507, Feb. 10, 2011]

#### **§ 30.141 How must I file a claim against a probate estate?**

You must file your claim under 25 CFR 15.302 through 15.305.

#### **§ 30.142 Will a judge authorize payment of a claim from the estate if the decedent's non-trust property was or is available?**

The judge will not authorize payment of a claim from the estate if the judge determines that the decedent's non-trust property was or is available to pay the claim. This provision does not apply to a claim that is secured by trust or restricted property.

[76 FR 7507, Feb. 10, 2011]

#### **§ 30.143 Are there any categories of claims that will not be allowed?**

(a) Claims for care will not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(b) A claim will not be allowed if it: